Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
8 June 2018

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 618/2014*, **

Communication submitted by:	I.P.W.F. (represented by counsel, John Phillip Sweeney)
Alleged victim:	The complainant
State party:	Australia
Date of complaint:	23 May 2014 (initial submission)
Date of present decision:	10 May 2018
Subject matter:	Deportation to Sri Lanka
Procedural issue:	Non-substantiation of claims
Substantive issue:	Risk of torture in the event of deportation to country of origin (non-refoulement)
Articles of the Convention:	3 and 22

1.1 The complainant is I.P.W.F., a national of Sri Lanka born on 17 November 1981. He sought asylum in Australia, but his application was rejected. He claims that his forcible removal to Sri Lanka would constitute a violation by Australia of articles 1 and 3 of the Convention. The complainant is represented by counsel.

1.2 In his communication of 23 May 2014,[1] the complainant urged the Committee to issue a request for interim measures in order to avert the imminent risk of his deportation to Sri Lanka pending the Committee's examination of his complaint. On 28 July 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of the Committee's rules of procedure, as the complainant's allegations of a risk of torture upon removal to Sri Lanka were not sufficiently substantiated. On 18 August 2014, the Committee reiterated that decision and informed the complainant accordingly. The complainant was removed to Sri Lanka on 13 January 2015, since all his appeals against the negative decisions of the Australian authorities were rejected.

The facts as presented by the complainant

2.1 The complainant is Sinhalese by ethnicity, and Roman Catholic by religion. He was born in Mahawewe in the North Western Province of Sri Lanka. He is a fisherman by

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

[1] A revised version of the communication was submitted to the Committee on 21 July 2014.

profession. Since 2009, he has been politically active in promoting and campaigning for the United National Party. In November and December 2009, he assisted the party in different tasks, including distributing election materials and decorating the roadside for rallies, and he attended several meetings in support of a presidential candidate, Sarah Fonseka. In March 2010, he participated as a member of the party's youth league and continued supporting the party by campaigning on behalf of Niroshan Perera in the parliamentary elections and carrying out various support tasks. While Mr. Perera won a seat in Parliament, the party remained in opposition. In 2010, the author became a party member because of his family's traditional support for the party.

2.2 By June 2010, thugs from the winning party, the United People's Freedom Alliance, had begun carrying out reprisals against United National Party campaigners. The complainant's political involvement with that party and his support of Mr. Perera made him a target. On an unspecified date in August 2010, a white van with a group of five or six people reportedly went to his house looking for him while he was at sea, asking his family where he was and making threats against him. The leader of the group was the son of Dayasithra Tissera, who had been a successful candidate in the parliamentary elections for Puttalam District. Mr. Tissera's son acted as a local political chief of the United People's Freedom Alliance operating in that district.

2.3 In view of those events, the complainant sought refuge in his uncle's house in Rajanganaya, a remote area of the North Western Province, until he left Sri Lanka by boat, heading for Australia. During that period, he worked on fishing vessels out of Trincomalee and Negombo, feeling somewhat safer due to the long periods at sea, usually a month at a time. At the same time, his wife went into hiding in Vavuniya with a nun, for fear that the people looking for her husband might go to her parents' house and abduct her. After the author had moved out of his family home, people from the United People's Freedom Alliance reportedly went to the family home looking for him on four or five occasions. In mid-2011, the complainant learned that members of that party had tried to find out which boat he was working on. From September 2010 to 26 March 2012, the complainant continued alternating short periods living in Rajanganaya and monthly periods fishing at sea. He alleges that one of his colleagues told him that he had been asked about the complainant's whereabouts and that there were thugs going after him in Trincomalee. Nonetheless, the complainant was able to return to his father's house every two or three months in order to visit his family and his wife.

2.4 In March 2012, the complainant agreed to become a crew member of a boat due to leave for Australia; his uncle was the organizer of the trip. The complainant was paid 7,500 rupees to crew the ship from Negombo to Beruwala. On 26 March 2012, the boat departed from Beruwala, heading for Australia, with a total of 99 people on board. The complainant was not paid for that journey.

2.5 On 11 April 2012, he arrived illegally in Australia and was placed in an immigration detention centre. On 30 June 2012, the complainant applied to the Department of Immigration, Multicultural Affairs and Citizenship for a Protection (Class A) visa, invoking the refugee protection obligations of Australia as he risked persecution due to his political affiliation, Sinhalese ethnicity, religion and the fact that he is a failed asylum seeker. Moreover, the complainant feared that in the event of his removal to Sri Lanka, he would be at risk of being charged not only with offences related to leaving Sri Lanka illegally, but also with people smuggling under article 45 C of the Immigrants and Emigrants Act of Sri Lanka. Therefore, he feared being held in custody and not being granted bail. However, at the time of his asylum application in Australia, the complainant did not mention his involvement as a crew member of the boat that had brought him to Australia for fear of being charged with smuggling people into Australia. In accordance with section 65 of the Australian Migration Act 1958, a visa may be granted if the applicant is a non-citizen in Australia and is eligible for protection under the Convention relating to the Status of Refugees, as amended by the Protocol relating to the Status of Refugees. On 1 October 2012, the Department rejected the complainant's application, considering that he did not meet the criteria for refugee protection. The complainant lodged an appeal with the Refugee Review Tribunal, which upheld the Department's decision on 4 December 2012. The Tribunal found that the author had not been the target of the United People's Freedom

Alliance after the 2010 elections. It did not accept that there was a real chance that he would be persecuted, since he was involved as an ordinary campaign worker only a few months before the elections and he was not involved in any political activities after the elections. The Tribunal also rejected the author's claim that he was at risk owing to being Catholic,[2] as he lived in a district where almost a third of all residents are Catholic. It also rejected his claim regarding the risks he faces for being a failed asylum seeker returning to Sri Lanka, as he is of Sinhalese ethnicity and is not accused of being in the Liberation Tigers of Tamil Eelam.

2.6 On 9 January 2013, the complainant applied to the Federal Circuit Court of Australia for a judicial review of the Refugee Review Tribunal decision. The Court dismissed the matter on 22 May 2013 on the grounds that the complainant had not been targeted by the United People's Freedom Alliance after the 2010 elections. Therefore, the Court considered that the risk of being persecuted due to his involvement as a campaign worker some months before the elections did not stand and that there was no evidence of his substantive political involvement after the elections. Subsequently, he challenged the Federal Circuit Court decision before the Federal Court of Australia, which dismissed the appeal on 16 August 2013. On 14 October 2013, the complainant's counsel requested the Minister of the Department of Immigration, Multicultural Affairs and Citizenship to undertake a ministerial intervention under section 46 A of the Migration Act 1958 (Cth), which states that the Minister may grant a visa to an unsuccessful applicant if he or she thinks that it is in the public interest to do so. However, the complainant's request for a ministerial intervention was refused on 4 February 2014.

2.7 The complainant claims that he has exhausted all available and effective domestic remedies capable of preventing his removal, asserting that he should not be required to pursue further remedies in higher courts, as those litigations may take prolonged periods of time to be finalized, while he is at risk of imminent removal.[3] He affirms that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

The complaint

3.1 The complainant claims that Australia, by forcibly returning him to Sri Lanka, would violate his rights under articles 1 and 3 of the Convention. He claims that upon removal to Sri Lanka, he will be at serious risk of torture and inhuman or degrading treatment, particularly at the hands of the Criminal Investigation Department of the Sri Lankan Police and the Sri Lankan Army, as he is suspected of being a member and supporter of the Liberation Tigers of Tamil Eelam.

3.2 He fears that he would be arrested upon arrival, questioned and detained on remand at Negombo prison, particularly as he left his country illegally, in contravention of section 45 (1) (b) of the Immigrants and Emigrants Act. He adds that it has been well documented that the conditions in Negombo Remand Unit are cramped, unsanitary and unhygienic, and that, regardless of the length of time spent on remand, his detention would constitute inhuman and degrading treatment. He claims that he fears that his Sinhalese ethnicity will increase his risk of harm as he will be seen as a traitor. Moreover, the complainant argues that internal relocation is not an option available to him, as he will immediately be detected and taken into custody by the Sri Lankan authorities upon arrival at Colombo Airport, where he would be questioned and interrogated as he left illegally and will be returning as a failed asylum seeker without a passport.

3.3 The author submits that he is at risk as the Sri Lankan authorities may become aware of his involvement in people smuggling since he was a member of the crew on the boat on which he came to Australia. He considers himself to be at risk of ill-treatment or harm from torture during the process of his investigation and indictment, and could possibly face a lengthy sentence for contravening section 45 C of the Immigrants and Emigrants Act. He

[2] Before the Refugee Review Tribunal, the complainant claimed that, being Catholic, he feared harm from Buddhist extremists. He did not make that argument in his submission to the Committee.

[3] This argument does not appear to be relevant, given that the complainant has sought judicial review of the Refugee Review Tribunal decision and lodged an appeal before the Federal Court.

claims that he will possibly be held in remand longer than most returnees as his passport may be used as evidence in a people smuggling case. In this regard, he mentions the case of his two cousins who have been granted a protection visa by Australia because they were considered to be in danger of torture and/or cruel or inhuman treatment as they were suspected in Sri Lanka of being involved in organizing the two boats on which they came to Australia.[4]

3.4 Moreover, the complainant refers to the treatment of his uncle, Nihal Pieris, who informed the complainant on 26 September 2013 that, upon voluntary return to Sri Lanka, he was interrogated for 16 hours and verbally and physically threatened at Colombo Airport by members of the Criminal Investigation Department of the Sri Lankan Police. He was charged, inter alia, with people smuggling and leaving the country illegally, then taken to Negombo Prison and released around 20 May 2014. The complainant argues that there is a very high probability that he would be subjected to the same treatment as his uncle due to the fact that he is a member of the same fishing family, that he was involved in the organization of the smuggling boat trip and that he may be suspected of participating in the same people smuggling organization.

3.5 The complainant recalls that torture and ill-treatment have been widespread and persistent in Sri Lanka, as well as abductions, disappearances and the use of secret detention centres. He refers to various background documents and reports depicting the situation in Sri Lanka, including the Committee's 2011 concluding observations (CAT/C/LKA/CO/3-4).[5]

Further submissions by the complainant

4.1 On 12 August 2014, the complainant presented a further submission, requesting that the Committee review its decision not to ask Australia for interim measures to suspend his return to Sri Lanka.

4.2 As regards the complainant's political activities in Sri Lanka, the complainant submits that he had been attending United National Party meetings from 2006 and became more politically active in promoting and campaigning for the party from 2009 onwards. In November and December 2009, he was involved in distributing election materials in support of the presidential candidate Sarath Fonseka. In particular, he assisted in decorating the roadside for rallies and attended meetings in support of the presidential candidate. During the Presidential election, he did not experience any problems since there was campaign security.

4.3 In March 2010, he participated as a member of the United National Party youth league, which was composed of between 15 and 20 members. Subsequently, he was involved in campaigning on behalf of Niroshan Perera for the Puttalam district parliamentary elections in April 2010, distributing posters, finding locations to hold rallies and meetings, and campaigning from house to house.

4.4 The United National Party remained in opposition after the election, although Mr. Perera was successful in his campaign. The author explains that after the end of the campaign, thugs from the successful United People's Freedom Alliance exerted reprisals against active opposition campaigners. His involvement in Mr. Perera's campaign and his support for the United National Party therefore made him a target and he was subject to political intimidation.

[4] The records of the Refugee Review Tribunal decision concerning the complainant's two cousins are attached to the submission. Decision CLF2012/227526 is related to the case of Amith Sajantha Thammhecti Pieris and decision CLF2012/220047 is related to the case of Asith Nelanka Thammhecti Pieris.

[5] The complainant also refers, for example, to a press article entitled "A disappearance every five days in post-war Sri Lanka", published on 31 August 2012 in Sri Lanka Brief; and the decision reached in the United Kingdom of Great Britain and Northern Ireland by the Upper Tribunal of the Immigration and Asylum Chamber in the matter of *GJ and Others (post-civil war: returnees) Sri Lanka CG v. Secretary of State for the Home Department*, dated 15 March and 19 April 2013.

4.5 The complainant reiterates the allegations made in his initial communication regarding an incident that took place in August 2010, when a group of five or six people went to his family home in search of him while he was at sea. In addition, he provides details about how the boat was organized for the trip to Australia and explains that he was paid 7,500 rupees to serve as a crew member.

4.6 The complainant also reiterates his claims that he is at risk of being subjected to torture due to his suspected links with the Liberation Tigers of Tamil Eelam and his involvement with the United National Party. Furthermore, he believes himself to be at risk of being subjected to torture by members of the United People's Freedom Alliance as he may not be afforded protection by the police, which would allow Alliance members to act with impunity.

State party's observations on admissibility and the merits

5.1 On 16 April 2015, the State party submitted its observations on admissibility and the merits of the complaint. It argues that the complainant's allegations are inadmissible as they are manifestly unfounded, since he did not establish a prima facie case. Should the Committee consider any of the complainant's claims to be admissible, these allegations should be dismissed for lack of merit. The complainant has not submitted sufficient evidence to support his claim that there are substantial grounds for believing that he is in danger of being subjected to torture,[6] as defined in article 1 of the Convention, if he were returned to Sri Lanka.

5.2 The State party holds that all the complainant's claims presented to the Committee have already been assessed by a series of domestic decision makers, including the Refugee Review Tribunal, and have been subject to judicial review by the Federal Circuit Court and the Federal Court of Australia, which determined that the complainant's claims were not credible. While the Australian authorities took particular account of the fact that "complete accuracy can seldom be expected from victims of torture",[7] they considered that the complainant's claims did not engage the State party's non-refoulement obligations. The State party argues that the Committee is not an appellate or judicial body, and it should give considerable weight to findings of fact that are made by organs of a State party. In particular, the complainant's claims have been assessed under the complementary protection provisions contained in paragraph 36 (2) (aa) of the Migration Act 1958 (Cth), which implements the non-refoulement obligations of the Government of Australia under the Convention and the International Covenant on Civil and Political Rights. Moreover, the complainant has not provided any new evidence in his submissions to the Committee.

5.3 The State party recalls that the complainant lodged an application for a protection visa on 30 June 2012. He was granted two bridging (general) visas (from 30 January 2013 to 16 October 2013 and from 16 July 2014 to 27 August 2014) while his protection visa application was under consideration by the Department of Immigration and Border Protection. On 1 October 2012, the complainant's protection visa application was refused. Having examined all the information submitted by the applicant, the primary decision maker considered that, although the author may have been involved in politics on behalf of the United National Party, his political profile was not significant enough to warrant ongoing adverse interest in him by the United People's Freedom Alliance, its supporting factions or the Sri Lankan authorities. Furthermore, his low-level political engagement ended after the 2010 elections. The primary decision maker also found that the author's fear of persecution on the grounds that he was a failed asylum seeker did not amount to a real risk of serious harm as the decision maker was not satisfied that returned asylum seekers were being detained or charged by the Sri Lankan authorities, except on the grounds of other outstanding criminal charges.

5.4 Moreover, the primary decision maker found that Sinhalese Catholics do not have a profile of risk in Sri Lanka. Accordingly, there were no substantial grounds for believing

[6] See, e.g., communications No. 39/1996, *Paez v. Sweden* (CAT/C/18/D/39/1996), para. 14.5; and No. 83/1997, *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.5.

[7] See, e.g., communication No. 21/1995, *Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.3.

that the author faced a foreseeable, real and personal risk of harm, including torture, if returned to Sri Lanka. Therefore, his protection visa was refused. The primary decision maker specifically noted that in assessing the credibility of an applicant's testimony, a decision maker must "be sensitive to the difficulties often faced by asylum seekers and the benefit of the doubt should be given to those who are generally credible, but are unable to substantiate all of their claims".[8] In this regard, the decision maker found that while the author and his family may have been involved in politics in their local area, the author did not meet the criteria to be considered as a target by United People's Freedom Alliance members or persons supporting the current ruling party. This led the decision maker to question the veracity of the author's claims that he was pursued by Alliance associates. The decision maker did not accept either that members of the Alliance had returned to the complainant's house four or five times following the 2010 elections, and found that there would have been ample opportunity to take action against the complainant; the fact that he was never attacked by an Alliance member further weakened his claim of being of such interest to the Alliance.

5.5 On 17 October 2012, the complainant made an application for external merits review to the Refugee Review Tribunal. On 5 December 2012, the Tribunal affirmed the primary decision maker's decision not to grant the complainant a protection visa. After considering the complainant's claims of his fears of harm on account of his political activity on behalf of the United National Party; being a failed asylum seeker; and being a Catholic of interest to Buddhist extremists, the Tribunal concluded that while the author may have been involved in political activity as an ordinary campaign worker for the United National Party in his local area, it could not accept that people from the United People's Freedom Alliance went looking for him months after the election, and months after his active involvement with the party had ceased. Therefore, the Tribunal did not accept that there was a real chance that the complainant would be persecuted for a Convention reason or that he would suffer significant harm if returned to Sri Lanka. The Tribunal also rejected the complainant's concerns at being a failed asylum seeker and a Catholic, as there was no evidence that he would be at risk of torture for those reasons. The Tribunal considered a Department of Foreign Affairs and Trade report, which stated that up until 16 October 2012, no returned failed asylum seekers had been charged with offences in relation to their illegal departure from Sri Lanka. The Tribunal also observed that the complainant lived in a region where approximately a third of inhabitants are Catholic; the Tribunal could find no reports detailing the problems, if any, that would be experienced by Catholics in the region.

5.6 On 22 May 2013, the Federal Circuit Court dismissed the complainant's application for judicial review of the Refugee Review Tribunal decision. The State party notes that the complainant had one ground of appeal before the Federal Circuit Court of Australia: that the Refugee Review Tribunal had committed a jurisdictional error by misconstruing or misapplying the applicable law or asking itself the wrong question. The Tribunal had concluded that the author's chance of being the subject of future violence or being arrested, in connection with his political activity, was very remote, having regard to the very large number of people involved in election campaigns in Sri Lanka. The Federal Circuit Court found that the Tribunal had made findings based on the evidence and material before it, and had reached conclusions based on its findings and to which it had applied the correct law.

5.7 On 18 September 2013, the Federal Court also dismissed the complainant's application for judicial review. The complainant relied on two grounds. The first was the same ground of appeal relied on in the Federal Circuit Court, which was dismissed for the same reasons as before. The second was that the Refugee Review Tribunal had erred by engaging in jurisdictional error, by failing to consider a claim or component of a claim, or by failing to take into account a relevant consideration. The relevant claim was the author's allegation before the Refugee Review Tribunal that his name had been on a list of local supporters of the United National Party that was given to the United People's Freedom Alliance. The Federal Court considered that this component had already been directly

[8] Protection (Class XA) Visa Decision Record, 1 October 2012, p. 10 (annexed to the initial communication).

assessed and rejected by the Refugee Review Tribunal and there had thus been no failure to consider a claim.

5.8 On 16 October 2013, the complainant made a request for a ministerial intervention under sections 417 and 48B of the Migration Act 1958 (Cth). In his initial request for a ministerial intervention, the complainant made new claims which had not previously been raised before the domestic decision makers, regarding his alleged involvement in people smuggling and alleged family links to people smugglers. However, he did not provide any credible information that would enhance his chances of making a successful protection visa application. Therefore, on 14 January 2014, the Department determined that the complainant's claim did not meet the criteria for referral to the Assistant Minister to request the exercise of his power under sections 48 B and 417 of the Act. On 27 August 2014, the author made a further request for ministerial intervention. On 16 September 2014, following the submission of his complaint to the Committee, the Department assessed the complainant's claim for ministerial intervention, before finding again that the case did not meet the criteria for referral to the Minister.

5.9 The claims that the complainant's family (his uncle and two cousins) had participated in people smuggling and his claims of a risk of being subjected to the same treatment as his uncle Nihal, if returned to Sri Lanka, were considered in the context of both requests for ministerial intervention, taking into account the serious concerns about the complainant's general credibility. When asked if he knew anyone on Christmas Island or anyone else in Australia upon arrival or at the time of his protection visa application on 30 June 2012, the complainant said he did not. Without commenting on the alleged treatment of Mr. Pieris upon his return to Sri Lanka, the Department noted that Mr. Pieris had returned voluntarily to Sri Lanka with the assistance of the International Organization for Migration, following the granting of visas to his sons. Moreover, the Department found that there was no evidence that the author was actually related in any way to those three men, or that the details of their cases had any significant bearing on his own.

5.10 The State party submits that the complainant admitted that his allegations of engagement in people smuggling, as he acted as a crew member on the boat that brought him to Australia, were not raised in his initial application to the Department or the Refugee Review Tribunal, but only as part of his requests for ministerial intervention. In the light of the serious concerns that the Department and the Tribunal had regarding the complainant's credibility and the plausibility of his claims, and the lack of any other evidence to support his new claim, this claim was considered unconvincing and unsubstantiated. When assessing the author's claims for ministerial intervention, the Department noted that the author was identified as a potential crew member by other asylum seekers who travelled on the same boat with him to Australia; however, he did not self-identify as such at that time. An Australian Federal Police investigation into his conduct was finalized after his arrival in Australia, and the author was not prosecuted for any people smuggling offence and is no longer a person of interest to the Australian Federal Police. As such, the Department found that there was no evidence to suggest that the author had ever been involved in people smuggling, nor was there any reason to believe that the Sri Lankan authorities would suspect him of being involved in such activities. The Department considered that even if the complainant were to be charged with people smuggling offences upon his return to Sri Lanka, that would not, in and of itself, amount to a real risk that the author would suffer significant harm. The complainant therefore did not provide any new information to the Committee to alter the conclusion reached in this regard. The complainant's submission of further information on 14 October 2014 regarding his contact with his uncle Nihal, Nihal's sons Amith and Asith, and another person named Rokshan in Sri Lanka in February and March 2012 concerning the organization of the boat journey that took him to Australia does not represent credible new information that could enhance his chance of a successful protection visa application.

5.11 The State party contests the complainant's claims that as a failed asylum seeker who departed Sri Lanka illegally, and who has alleged links to people smuggling activities, he would be arrested and detained, and possibly tortured if returned to Sri Lanka. It argues, referring to article 3 (2) of the Convention, that the existence of a general risk of violence does not constitute a sufficient ground for determining that a particular person would be in

danger of being subjected to torture upon return to that country; additional grounds must exist to show that the individual concerned would be personally at risk.[9] The issues raised by the complainant in regard to the human rights violations in, and the return of asylum seekers to, Sri Lanka have been specifically and carefully considered by all domestic processes, with due account of the relevant background country information.[10] The relevant decision makers have consistently concluded that there are no substantial grounds for believing that the author is at a foreseeable, personal and real risk of torture if returned to Sri Lanka. The State party therefore submits that the author has not provided sufficient evidence that indicates that he would be personally at a real risk of harm, or that any adverse treatment would amount to torture under article 1 of the Convention.

5.12 The State party submits that even if the author was, upon his return to Sri Lanka, to be charged with leaving the country illegally under section 45 B of the Immigrants and Emigrants Act, this would not result in the complainant facing a real risk of torture. Department of Foreign Affairs and Trade reports indicate that where individuals are charged with section 45 B offences, they are typically detained for a matter of hours, charged and then released. The complainant alleges that the Negombo remand centre, where those charged with the section 45 B offence are allegedly taken is cramped, unsanitary and unhygienic and that to be held there constitutes degrading treatment. However, for the purposes of the Convention, these claims are not sufficient to invoke the non-refoulement obligations under article 3 of the Convention. Even if the State party accepted that the author was likely to face a short period of detention in such a facility, the complainant still does not face a real risk of torture, particularly given that he is not of Tamil ethnicity, nor does he have any links to the Liberation Tigers of Tamil Eelam or credible links to people smuggling operations. For that reason, the State party submits that the complainant's claims are inadmissible and/or without merit.

State party's further submission

6.1 On 5 August 2016, the State party indicated that, having exhausted all domestic remedies, the complainant had no lawful right to remain in Australia. He was removed to Sri Lanka on 13 January 2015. On this occasion, the Government of Australia expressed its regret at the delay in providing the Committee with the updated information.

6.2 In view of that development, and given that the author has not provided any further information to the Committee in regard to his communication since his arrival in Sri Lanka, the State party requested that the Committee discontinue the examination of the complainant's communication.

Complainant's comments on the State party's observations

7.1 On 1 December 2016, the complainant submitted that he was sent back to Colombo on 13 January 2015 with an escort consisting of two Australian security officers. Upon arrival, two Criminal Investigation Department officers led him away to an old room in the airport building. He was held in that same room for 24 hours and questioned every six hours. On 14 January 2015, the officers gave him a mobile telephone and asked him to inform his family of his whereabouts.

7.2 After that, a judge released him on bail of about 500,000 rupees, while requesting him to reappear in Negombo court on 25 January 2015. Since then, his case was heard about every five months. He appeared in the court for the last time on 21 June 2016. On that day, the judge questioned him about the name of the owner and the skipper of the vessel in which he had travelled to Australia.

[9] See, e.g., *G.R.B. v. Sweden*, para. 6.3.

[10] The Australian authorities considered, inter alia, the information provided by: the Home Office of the United Kingdom, entitled *Sri Lanka: Country of Origin Information (COI) Report*, 7 March 2012; the Immigration and Refugee Board of Canada, August 2011; the United States State Department, entitled "Sri Lanka: 2011 country report on human rights practices", 24 May 2012; and the Office of the United Nations High Commissioner for Refugees (UNHCR), entitled "UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Sri Lanka", 5 July 2010.

7.3 On 22 June 2016, the complainant was requested to appear in the Criminal Investigation Department head office in Colombo on 23 June 2016. He presented himself accordingly. He was reportedly taken to the fourth floor by two Criminal Investigation Department officers, where various types of arms were on display. He was threatened and asked about the owner of the vessel, the name of its skipper and the other persons involved in the trip. He claims to have been tortured and questioned in filthy language that day. Although he denied involvement as a crew member, asserting that he had to pay for the trip and had known nothing beyond that, he was beaten, started bleeding and consequently lost consciousness. When he regained consciousness, he was lying in hospital.[11] Again, he was called to appear at the head office of the Criminal Investigation Department. Since then, he has been living in fear as he has absconded and has not appeared at the courts or the Criminal Investigation Department headquarters. He therefore hoped that Australia would issue him with a security visa.

7.4 The complainant was allegedly asked to reveal all the details about the trip to Australia to the Criminal Investigation Department once again on 24 November 2016.[12] He claims that his wife has filed for divorce, as she fears living with him.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on this ground.

8.3 The Committee notes the State party's argument that the communication is manifestly ill-founded, since the complainant has not substantiated the existence of substantial grounds for believing that he would face a foreseeable, present, personal and real risk of harm, including torture, if returned to Sri Lanka,[13] and should therefore be held inadmissible.

8.4 The Committee also notes the State party's argument that, although the author may have been involved in politics on behalf of the United National Party, his political profile was not significant enough to warrant ongoing adverse interest in him by the United People's Freedom Alliance, its supporting factions or the Sri Lankan authorities. The State party's authorities questioned the veracity of the author's claims that he was pursued by United People's Freedom Alliance associates several months after the election, and asserted that the fact that he was never attacked by any members of the Alliance weakened his claim that he was of such interest to it. The Committee further notes that the State party considered that the complainant's low-level political engagement ended after the 2010 elections; that his fear of persecution on grounds of being a failed asylum seeker did not amount to a real chance of serious harm or a risk of torture as the domestic authorities were not satisfied that returned asylum seekers were being detained or charged in relation to their illegal departure by the Sri Lankan authorities; and that Sinhalese Catholics do not have a profile of risk in Sri Lanka and that no incidents proving otherwise had been reported in the relevant region.

[11] No medical evidence has been submitted to support those claims.

[12] No further details have been provided and that information appears to be inconsistent with the complainant's earlier statements.

[13] See the Committee's general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, paras. 11 and 38.

8.5 The Committee observes that the complainant presented new claims as part of his requests for ministerial intervention, which were refuted by the State party, since the complainant's alleged involvement in people smuggling and alleged family links to people smugglers were not supported by any credible information that would make his protection visa application successful. The Committee also observes that the State party found no evidence that the complainant is related in any way to Nihal Pieris or his sons Amith and Asith, or that the details of their cases have any significant bearing on his own. Consequently, the State party found that there was no evidence to suggest that the author had ever been involved in people smuggling, nor was there any reason to believe that the Sri Lankan authorities would suspect him of being involved in such activities.

8.6 The Committee notes the complainant's further information submitted on 14 October 2014 regarding his contact with the uncle and his sons, and another person named Rokshan in Sri Lanka in February and March 2012, concerning the organization of the boat journey to Australia. In this context, the Committee also notes the State party's observations that the relevant decision makers have consistently concluded that there are no substantial grounds for believing that the author is at foreseeable, personal and real risk of torture if returned to Sri Lanka, and that even if the author was, upon his return to Sri Lanka, to be charged with leaving the country illegally under section 45 B of the Immigrants and Emigrants Act, this would not result in the complainant facing a real risk of torture. Lastly, the Committee observes that the complainant was removed to Sri Lanka in January 2015, that he was subsequently reportedly subjected to questioning by the Criminal Investigation Department officers and beaten in June 2016, and that no further comments have been received from the complainant since December 2016. In this regard, the Committee observes that the complainant submitted the information on his alleged beating, which occurred more than a year after his removal to Sri Lanka, only five months later, without any accompanying medical evidence or evidence that he had complained about the incident to the official authorities.

8.7 In the light of the above, and in the circumstances of the present case, the Committee considers that the complainant has failed to provide sufficient evidence to substantiate his allegations of a risk of torture or other ill-treatment on account of being a failed asylum seeker; for having left Sri Lanka illegally; due to his political affiliation to the United National Party or his religion; or his perceived involvement in people smuggling activities. As regards the alleged beating of the complainant by the Criminal Investigation Department officers following his removal to Sri Lanka, the Committee considers that those claims have not been adequately corroborated. The Committee therefore concludes that the complainant's communication is inadmissible for lack of substantiation, in accordance with article 22 of the Convention and rule 113 (b) of its rules of procedure.[14]

9. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 of the Convention;

(b) That the present decision shall be transmitted to the complainant and to the State party.

---

[14] See, e.g., communications No. 308/2006, *K.A. v. Sweden* (CAT/C/39/D/308/2006), paras. 7.2 and 8, and No. 687/2015, *Z.A.H. v. Canada* (CAT/C/61/D/687/2015), para. 7.7.